

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

SANDRA HERRERA, et al.,

Plaintiffs,

Case No. C95-5025 RJB/JKA

VS.

PIERCE COUNTY, et al.,

Defendants.

ORDER REJECTING STIPULATION TO SEAL MORTALITY REVIEWS

This matter comes before the court pursuant to the parties proposed Stipulation to File Mortality Reviews Under Seal (Dkt #220). The Mortality Reviews in question were prepared by the Pierce County Jail physician regarding the death of inmates from 2006 through 2008. The court has considered the Stipulation, the subject Mortality Reviews, and the proposed Order. The court conducted a telephone conference with counsel advising them of the court's reluctance to approve the order (even though stipulated) for a variety of reasons relating the issue of transparency regarding public records, and the fact that the persons for whom the privilege was asserted are deceased. The court heard further from counsel, agreed to review the Mortality Reviews for content, and having considered the files and records herein, finds and orders as follows:

1. Federal Courts have not traditionally honored state statutes providing for a privilege when considering county correctional health services *mortality reviews* (emphasis supplied) regarding the circumstances of a prisoner's death. Agster v. Maricopa County (9th Cir. 2005) 422 F.3d 836, 838-839. Virmani v. Novant Health Inc. (4th Cir. 2001) 259 F.3d 284, 293; Adkins v. Christie (11th Cir. 2007) 488 F.3d 1324, 137-1330.

2. The parties request to seal the Mortality Reviews is denied.

3. Nothing in this ruling should be construed to preclude the defendants' rights to challenge the relevancy or admissibility of the Mortality Reviews.

Dated this 19th day of August 2009.

/s/ J. Kelley Arnold
J. Kelley Arnold, U.S. Magistrate Judge